

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2031.03
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	April 23, 2003
DATE OF REPORT:	June 13, 2003
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	October 3, 2003

**COMPLAINT ISSUES:**

Whether the Elkhart Community Schools, Concord Community Schools and the Elkhart County Special Education Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written with respect to speech-language services during the period from March 10, 2003, to April 14, 2003, and a second period beginning April 21, 2003.

511 IAC 7-27-6(a)(5) by failing to specify the anticipated length, frequency, location, and duration of services in the student's IEP.

511 IAC 7-27-5(c) by failing to provide the parent with a copy of the written case conference report and notice of proposed placement or denial of placement, no later than ten (10) business days after the date of the case conference committee meeting.

On May 23, 2003, the Director of Special Education granted an extension of time until June 6, 2003, due to the complexity of the issues. A second extension until June 13, 2003, was granted for the same reason.

**FINDINGS OF FACT:**

1. The Student is five years old and is eligible for special education and related services as an early childhood student with a communication disorder. Although the Student has legal settlement in a school corporation within the Elkhart County Special Education Cooperative (County District), the Student initially received services from the Elkhart Community Schools (City District). This was in part due to an error regarding the Student's legal settlement, as well as an agreement between the County and City Districts that each district will serve students with communication disorders attending a preschool located within its boundaries, regardless of legal settlement.
2. On September 4, 2002, the City District convened the Student's case conference committee (CCC) following an evaluation by City District personnel. The CCC agreed upon an IEP (September 4 IEP) that provided for speech-language services 1 to 2 times per week and placement in a private preschool (Private Preschool) at public expense. The September 4 IEP does not state the length of each speech-language session nor does it contain any criteria for determining when the Student would receive one session or two sessions per week. The duration of the September 4 IEP is through August 30, 2003.

3. The CCC was convened on January 29, 2003, and reconvened on February 11. Although revisions to the September 4 IEP were proposed, no changes were agreed upon. The City District mailed a copy of the February 11 CCC Report and proposed IEP to the Complainant on February 21, 2003. However, the Complainant did not receive the documents. The speech-language assistant (SLA) provided the Complainant with a copy of the February 11 IEP at a speech-language therapy session on April 15, 2003.
4. The Complainant withdrew the Student from the Private Preschool on March 10, 2003, and the City District asserts its responsibility to serve the Student ended with this withdrawal. However, the City District did not schedule a CCC meeting or otherwise advise the County District that the Student no longer attended a preschool within the City District's boundaries. Despite the student's withdrawal from the Private Preschool, the City District's SLA attempted to reach the Complainant and finally made contact March 31, 2003, to arrange for the continuation of speech-language services. No services were provided to the Student from March 10, 2003, through April 14, 2003. However, a week during that period would have been spring vacation, if the Student had been enrolled in a school.
5. The Student received speech-language services on April 15, 2003, and April 21, 2003. However, at the April 21 session, the SLA advised the Complainant that speech-language services were being discontinued because no agreement had been reached on the February 11 IEP.
6. On May 2, 2003, the Student was enrolled in the County District's early childhood language enrichment class; however, the CCC did not convene and the September 4 IEP remained in effect. On the Transfer Student Enrollment Form, the Complainant signed her consent for "immediate special education service – speech class 2X per week through May 16, 2003." The Student received group speech-language services two times per week for 2\_-hour sessions, for a total of 4\_ hours per week through May 16, 2003. No speech-language services were provided after that date. Although the County District intended that a portion of the 4\_ hours per week to be compensatory services for the sessions missed in March and April, this was not addressed through a CCC meeting or revised IEP.
7. On May 13, 2003, the County District convened the CCC and developed an IEP to begin on August 22, 2003. The Complainant signed the IEP indicating she did not agree and did not give consent for its implementation.

## **CONCLUSIONS:**

1. Finding of Fact #2 indicates the Student's IEP of September 4, 2002, required speech-language services one to two times per week through August 30, 2003. Findings of Fact #4, #5, and #6 demonstrate that the Student experienced an interruption of these services in March, April, and May of 2003. Findings of Fact #6 and #7 reflect that, although the September 4 IEP remains in effect, no speech-language services have been provided since May 16, 2003. Therefore, the City and County Districts are found to have violated 511 IAC 7-27-7(a).
2. Finding of Fact #2 indicates that the September 4 IEP, developed by the City District, failed to include the length of a speech-language therapy session and stated the frequency of service as a range without including any evaluative criteria to determine the actual number of sessions to be provided in a given week. When an IEP utilizes a range of time to describe the frequency of a service, the IEP must also include evaluative criteria for determining exactly how many sessions will occur in a given week. Without the evaluative criteria, neither the parent nor school personnel can clearly identify how many sessions the student will receive each week. Further, stating the amount of service as range is

permissible only when necessary to meet the unique needs of a student. Therefore, the City District is found to have violated 511 IAC 7-27-6(a)(5).

3. Finding of Fact #3 reflects that, although the City District put the February 11, 2003, CCC Report/IEP in the mail within ten business days, it was not received by the Complainant within that time. The Complainant did not receive a copy of the IEP until more than two months after the CCC meeting. Therefore, the City District is found to have violated 511 IAC 7-27-5(c), although the City District ultimately provided the Complainant with the requisite documents.

## **DISCUSSION:**

Generally, a complaint identifies a single school corporation and special education planning district in the allegations of non-compliance. Although the school corporation of legal settlement (along with its special education planning district) has ultimate responsibility for ensuring the availability of a free appropriate public education to a student with a disability, a different school corporation may provide the actual services to the student. When that occurs, the school corporation providing services is also responsible for ensuring the student is provided with a free appropriate public education and compliance with the requirements of the IDEA and Article 7.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

## **CORRECTIVE ACTION:**

1. The **Concord Community Schools** and **Elkhart County Special Education Cooperative** shall:
  - a. Reconvene the CCC to determine the amount of compensatory services to be provided to the Student for the interruption of services that have occurred since March 10, 2003. The CCC Report and IEP shall clearly document the CCC's consideration of compensatory services and provide details of the compensatory services agreed upon. A copy of the CCC Report and IEP shall be submitted to the Division no later than August 29, 2003.
  - b. With Elkhart Community Schools, review the IEPs of preschool students having legal settlement within a school corporation in the Elkhart County Special Education Cooperative but being served by Elkhart Community Schools to ensure that the students' IEPs are written in accordance with 511 IAC 7-27-6 and that services are being implemented accordingly. A written assurance statement shall be submitted documenting that the review has been completed and that any problems noted have been resolved. The assurance statement shall be submitted no later than September 15, 2003.
2. The **Elkhart Community Schools** shall:
  - a. During a regularly scheduled staff meeting or via a written memorandum, advise appropriate staff that:
    - i. The length of special education and related services must be stated in a Student's IEP; and
    - ii. Using a range to state the length or frequency of services in a student's IEP is permissible only if the IEP expressly states the evaluative criteria to determine the actual amount of services to be provided in a given time period.

Documentation of compliance (staff meeting agenda and handouts or written memorandum) shall be submitted to the Division no later than September 15, 2003.

- b. Review the IEPs for all preschoolers and take necessary action to ensure that each student's IEP:
  - i. States the length of each service to be provided; and
  - ii. Includes, for each IEP that utilizes a range of time to describe the length or frequency of a service, evaluative criteria that allows both the parent and school staff to know the amount of a service the student will receive during a given time period.

A written statement, assuring that IEPs for preschoolers served by the school corporation include the length of service provided and evaluative criteria when a range is used to describe the length or frequency of a service, shall be submitted no later than September 15, 2003.

- 3. The **Elkhart County Special Education Cooperative** and the **Elkhart Community Schools** shall review and, if necessary, revise any written agreement, policies, and procedures governing the provision of services to preschool students with communication disorders who do not have legal settlement within the school corporation providing those services to address:
  - i. How the serving school corporation will notify the school corporation of legal settlement that the serving school corporation will no longer be providing services;
  - ii. Who is responsible for notifying the parent of the changes and advising the parent how to obtain services from the school corporation of legal settlement;
  - iii. How the transfer of services will occur to ensure no interruption of services; and
  - iv. How the school corporation of legal settlement will ensure that the serving school corporation's IEP is developed and implemented in accordance with 511 IAC 7-27-6 and 511 IAC 7-27-7.

The Elkhart County Special Education Cooperative shall send a copy of the agreement and procedures documenting these activities to the Division no later than August 29, 2003.